

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 3785 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?
1 to 5 No

GOKABAI WD/O BHAVANSINH J THAKORE

Versus

SARAFRAJKHAN B PATHAN

Appearance:

MR VIPUL S MODI for Petitioners

MR AJAY R MEHTA for Respondent No. 3

CORAM : MR.JUSTICE S.D.SHAH

Date of decision: 22/10/97

ORAL JUDGEMENT

1. Admit. Mr. Ajay R. Mehta appears and waives service of admission for respondent No.3 only. The rest of the respondents need not be served as admittedly the vehicle involved in the vehicular accident is insured with Respondent No.3.

2. This First Appeal is preferred by the widow of

Bhavansinh Jehaji Thakore who expired in the vehicular accident that took place on 4.12.1986. The claimant No.2 is a major son, who could not be said to be dependent upon the deceased, the Tribunal has rightly not awarded any amount to him. It appears that a vehicular accident took place on 4.12.1986, in which Bhavansinh Jehaji Thakore was a labourer in Truck No. GRX 4271 expired. The truck was loaded with heavy steel rolls and it was passing with such rolls on Chanasma Harij road and that time the vehicle of the opponent No.2 which was being driven by opponent No.1 and insured with New India Insurance Company Limited came at a excessive speed and near village Gharmoda, the opponent No.1 applied breaks all of a sudden and the iron rolls slipped and came upon the deceased and the deceased received serious fatal bodily injuries and died on the spot. The widow of the deceased, therefore, filed a petition being Motor Accident Claim Petition No. 82 of 1988 before the Motor Accident Claims Tribunal (Auxiliary), Mehsana, and claimed the compensation of Rs.1,25,000/-. The Tribunal has by its judgement and award dated 8th of September, 1994, partially allowed the claim of the widow and has dismissed the claim of the original claimant No.2 who was not the dependent of the deceased. The Tribunal awarded the amount of Rs. 45,800/- to be recovered from all the opponents jointly and severally with running interest at the rate of 12 per cent from the date of the petition till realisation.

4. Being aggrieved thereby, the opponent No.1, namely, the widow of the deceased, has filed the present First Appeal for enhancement of the claim, inter alia, contending that the amount awarded by the Tribunal to the widow is not just and proper and is quite below the brackets than which the amount is awarded in such cases. On the main issue as to whether the claimant proved that death of Bhavansinh Jehaji Thakore was caused due to the rash and negligent driving of the driver of the vehicle involved in the accident, the Tribunal recorded the finding in the affirmative. However, on the question of compensation, the Tribunal awarded the amount of Rs. 48,800/- only and the widow of the deceased is aggrieved by such award and hence the present First Appeal is preferred before this Court.

5. The widow has examined herself at Exhibit 25 and stated that her deceased husband was doing labour work in the truck and he was earning about Rs. 800/- per month. Undoubtedly, no certificate of such income is produced but for the labour work which a person carries on in a truck as a labourer, the amount claimed is not something

excessive nor could it be said that a labourer doing such manual work, would not earn this much amount for the labour which he puts in. The message was received by her from the police and dead body of her husband was received at the native place and she has spent various amounts for funeral, etc. She has also deposed that she has spent around Rs. 1,500/- to Rs. 1,600/- towards after death ceremony of her husband though she has not maintained any account of such expenses. The Tribunal having discussed the evidence in detail, has ultimately found that the deceased was earning Rs.15 per day for labour work and that is multiplied by 12 years, it would work out to Rs.180/- per month. The Tribunal has thereafter worked out the annual income and has applied the multiplier of 12 years and has ultimately awarded the amount which is stated hereinabove.

6. Mr. Vipul Modi, the learned counsel appearing for the claimant has submitted before the court that the amount awarded by the Tribunal is very low, unreasonable, arbitrary and quite farcical. A labourer working in a truck would naturally earn the amount of more than Rs. 300/- per month as the work which he was required to perform was a manual labour and that too in a truck carrying iron rolls. To work out the income of such a labourer at Rs. 200/- per month and Rs. 2,400/- per year is quite ridiculous, and in his submission. higher amount ought to have been awarded. I agree with the submission of Mr. Vipul Modi, and in my opinion, the yearly income of such a labourer who has met an untimely death at the age of 45 years, shall have to be worked out at more than Rs. 450/- per month and if the same is multiplied by 12, it works out to Rs. 5,400/- and applying the multiplier of 12 years, it would work out to Rs.64,800/- that amount would be within the brackets and can be said to be quite reasonable, just and proper which would be needed for the purpose of the widow of a labourer who has met an untimely death at a very young age of about 45 years. In my opinion, therefore, the judgment and award of the Tribunal insofar as it has awarded the amount of Rs.48,800/- is required to be modified so as to award the amount of Rs.64,800/-. The Tribunal has awarded Rs. 20,000/- under the heading of loss of expectation of life and the said amount is reasonable and is not required to be interfered with. The total amount is now required to be paid by the Insurance Company to the widow of the deceased would work out to Rs. 84,800/- instead of Rs. 48,800/- which is awarded by the Tribunal. The additional amount which is awarded to the claimant by this Court is directed to be deposited in any Scheduled Nationalised Bank for a period

of 5 years and the actual interest accruing thereon is directed to be paid to the widow. The First Appeal accordingly succeeds partially to the aforesaid extent only. In this First Appeal, there shall be no order as to costs.

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